IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL WRIT PETITION NO.9802/07
Ganga Ram Vs. Addl. District Judge & Ors.

Date of order : 29/11/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Ganesh Meena for the petitioner.
Shri Suresh Sahni with
Shri Kuldeep Sharma for the respondent.

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Heard learned counsel for the parties.

The learned counsel for the petitioner has argued that the petitioner has challenged the order dated 21.11.2007 passed by the Additional District Judge, Rajgarh, District Alwar by which the injunction order passed in his favour by the Court of Civil Judge (JD), Rajgarh was reversed.

The petitioner filed a suit for permanent injunction along with the application for temporary injunction under Section 39 Rule 1 & 2 read with 151 CPC

before the trial court inter alia on the premise that the plaintiff was in possession of the disputed land which was part of the abadi. It was submitted that the plaintiff had constructed three rooms on that land and given to grandsons of his aunt for the purpose of residence only on licence basis. They however had a change of mind and therefore they in collusion with Up-Sarpanch and Secretary of Gram Panchayat Itoli by mal practices procured the patta from Gram Panchayat on 20.11.2006 and thereafter co-defendant Hari Kishan vide sale deed dated 9.11.2006 sold the land. It was submitted that the patta and sale deed were void in law. The Sarpanch of Gram Panchayat has declined having issued any patta and has stated that he was persuaded to sign the patta only on the defendants telling him that they wanted to take certain loan on the

strength of such patta. The learned trial court finding prima facie case in favour of the plaintiff and primarily relying on the affidavit of Sarpanch of Gram Panchayat, Itoli on non judicial stamp of Rs.100/- as also the Panches of other Gram Panchayats who deposed on oath that they made the signatures on the patta and the proceedings of the Gram Panchayat granted the injunction order in favour of the petitioner. The learned Additional District Judge in appeal however reversed the same.

Learned counsel for the petitioner has argued that the Additional District Judge committed an error in interfering with the finding of the trial court. It was submitted that when the Sarpanch and Panchas of Gram Panchayat have stated on oath that they erroneously made signatures on the patta, there was no basis on which

the defendants could claim the title over the land in dispute. Learned counsel therefore prayed that the reversal of the injunction order passed by the appellate court is bad in law. The impugned order therefore be set aside and the order passed by the first court be restored.

Having heard the learned counsel for the petitioner I find that the plaintiff had admitted possession of the defendants but he claims that defendants Ramlal, Kailash and Hari Kishan were put in possession by the plaintiff himself on licence basis and in fact constructed three rooms for their residence on that land and subsequently they had a change of mind and thereafter in connivance with the Up-Sarpanch and Secretary got the patta issued in their favour of the land lying in front of the rooms. The learned first appellate court in reversing the

injunction order has observed that Sarpanch and Panchas of the Gram Panchayat do not deny their signatures on the patta. Their explanation that they made signatures only to enable the defendants to obtain the loan on the strength of such patta was not accepted by the learned first appellate court. The petitioner has not been able to prove any title over the land expect asserting that he is in possession. The learned first appellate court also found that neither the plaintiff petitioner in a suit have claimed the relief of declaring him owner or title of the land nor has he assailed the validity of the patta. Learned counsel during the course of arguments argued that proceedings for cancellation of patta has already been initiated by the order of Additional District Collector but on the basis of mere possibility of

cancellation of patta, the existence of the patta which is a fact cannot be denied.

I therefore do not find any error in the approach taken by the learned first court.

The writ petition is therefore summarily dismissed.

(MOHAMMAD RAFIQ), J.

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